

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

JOSE PADILLA, et al.,)	
)	
Plaintiffs,)	Case No. 2:07-410-HFF-RSC
)	
v.)	
)	
DONALD H. RUMSFELD, et al.,)	
)	
Defendants.)	
)	

**UNOPPOSED MOTION FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM
BY SECRETARY OF DEFENSE IN HIS OFFICIAL CAPACITY
AND MEMORANDUM IN SUPPORT THEREOF**

Defendant Robert M. Gates, in his official capacity as the Secretary of Defense, hereby moves, by his undersigned counsel, for leave to file a supplemental memorandum in support of his motion to dismiss (Doc. #92).

1. During oral argument on the Secretary's motion to dismiss on January 29, 2009, counsel for the plaintiffs substantially relied on two court decisions not cited in their opposition memorandum (Doc. #107), and provided copies of those decisions to the Court during the argument.
2. Given that the subject decisions — Meese v. Keene, 481 U.S. 465 (1987), and Foretich v. United States, 351 F.3d 1198 (D.C. Cir. 2003) — were not cited in plaintiffs' opposition, defendants have not heretofore had an adequate opportunity to address the issues raised thereby.

Accordingly, the Secretary of Defense respectfully requests leave to file the accompanying Supplemental Memorandum in Support of Motion to Dismiss by United States Secretary of Defense in His Official Capacity, addressing these two court decisions and the issues raised therein.

Counsel for the Secretary conferred regarding this motion with counsel for the plaintiffs, Ms. Hope R. Metcalf, who stated that plaintiffs consented to the relief requested herein.

Respectfully submitted,

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s/ Barbara M. Bowens

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IN HIS OFFICIAL CAPACITY